

TITLE SEVEN. Probate Rules

CHAPTER 1. General Provisions

Drafter's Notes

2000—The new set of probate rules include rules relating to the appointment of executors and administrators, bonds, spousal property petitions, creditors' claims, sales of property, inventories and appraisals, distributions, and contested hearings.

Rule 7.1. Preliminary provisions

Rule 7.2. Definitions; construction of terms

Rule 7.3. Waiver of rules in probate proceedings

Rule 7.1. Preliminary provisions

- (a) **[Applicability of rules]** The rules in this title apply to every action and proceeding to which the Probate Code applies and, unless they are elsewhere explicitly made applicable, do not apply to any other action or proceeding.
- (b) **[Authority for and purpose of rules (Cal. Const., art. VI, § 6)]** The rules in this title are adopted by the Judicial Council under its constitutional and statutory authority to adopt rules for court administration, practice, and procedure that are not inconsistent with statute. These rules are designed to implement the purposes of the probate law by promoting uniformity in practice and procedure.
- (c) **[Rules of construction]** Unless the context otherwise requires, these preliminary provisions and the following rules of construction govern the construction of the rules in this title:
 - (1) To the extent that the rules in this title are substantially the same as existing statutory provisions relating to the same subject matter, they must be construed as a restatement and a continuation of those statutes;
 - (2) To the extent that the rules in this title may add to existing statutory provisions relating to the same subject matter, they must be construed so as to implement the purposes of the probate law.

(Subd (c) amended effective January 1, 2003.)

- (d) **[Jurisdiction]** The rules in this title are not intended to expand, limit, or restrict the jurisdiction of the court in proceedings under the Probate Code.

(Subd (d) adopted effective January 1, 2003.)

Rule 7.1 amended effective January 1, 2003; adopted effective January 1, 2000.

Rule 7.2. Definitions; construction of terms

- (a) **[Definitions]** As used in the rules in this title, unless the context or subject matter otherwise requires:
- (1) The definitions in division 1, part 2 of the Probate Code apply.
 - (2) “Pleading” means a contest, answer, petition, application, objection, response, statement of interest, report, or account filed in proceedings under the Probate Code.
 - (3) “Amended pleading” means a pleading that completely restates and supersedes the pleading it amends for all purposes.
 - (4) “Amendment to a pleading” means a pleading that modifies another pleading and alleges facts or requests relief materially different from the facts alleged or the relief requested in the modified pleading. An amendment to a pleading does not restate or supersede the modified pleading but must be read together with that pleading.
 - (5) “Supplement to a pleading” and “supplement” mean a pleading that modifies another pleading but does not allege facts or request relief materially different from the facts alleged or the relief requested in the supplemented pleading. A supplement to a pleading may add information to or may correct omissions in the modified pleading.

(Subd (a) amended effective January 1, 2003.)

(b) **[Construction of terms]**

- (1) “Must” is mandatory and “may” is permissive;
- (2) The past, present, and future tense each include the others; and

(3) The singular and plural number each includes the other.

(Subd (b) amended effective January 1, 2002.)

*Rule 7.2 amended effective January 1, 2003; adopted effective January 1, 2000;
previously amended effective January 1, 2002.*

Drafter's Notes:

2002—New rule 7.902 requires that all petitions and accounts involving trusts must state the names and last known addresses of all vested or contingent beneficiaries. Rule 7.201 is amended to eliminate the provision that a petition need not specify the character and value of the property of the estate or the probable income unless the personal representative lives out of state. Rules 7.1001 and 7.1050 are amended to require that proposed guardians and conservators submit confidential screening forms, to indicate that these requirements do not apply to public guardians or to banks and other entities entitled to conduct the business of a trust company. Other probate rules have been amended to use “must” instead of “shall.”

Rule 7.3. Waiver of rules in probate proceedings

The court for good cause may waive the application of the rules in this title in an individual case.

Rule 7.3 amended effective January 1, 2003; adopted effective January 1, 2000.

CHAPTER 2. Notices, Publication, and Service

Rule 7.50. Description of pleading in notice of hearing

Rule 7.51. Service of notice of hearing

Rule 7.52. Service of notice when recipient's address unknown

Rule 7.53. Notice of hearing of amended or supplemented pleadings

Rule 7.54. Publication of Notice of Petition to Administer Estate

Rule 7.55. Ex parte application for order

Rule 7.50. Description of pleading in notice of hearing

The notice of hearing on a pleading filed in a proceeding under the Probate Code must state the complete title of the pleading to which the notice relates.

Rule 7.50 adopted effective January 1, 2003.

Rule 7.51. Service of notice of hearing

(a) [Direct notice required]

- (1) Except as otherwise permitted in the Probate Code, a notice sent by mail under Probate Code section 1220 must be mailed individually and directly to the person entitled to notice.
- (2) A notice mailed to a person in care of another person is insufficient unless the person entitled to notice is an adult and has directed the party giving notice in writing to send the notice in care of the second person.
- (3) Notices mailed to more than one person in the same household must be sent separately to each person.

(b) [Notice to attorney] If a notice is required or permitted to be given to a person who is represented by an attorney of record in the proceeding, the notice must be sent as required in Probate Code section 1214.

(c) [Notice to guardian or conservator]

- (1) When a guardian or conservator has been appointed for a person entitled to notice, the notice must be sent to the guardian or conservator.
- (2) A copy of the notice must also be sent to the ward or conservatee unless:
 - (A) The court dispenses with such notice; or
 - (B) Under Probate Code section 1210 in a decedent's estate proceeding, the notice is personally served on a California-resident guardian or conservator of the estate of the ward or conservatee.

(Subd (c) amended effective January 1, 2004.)

(d) [Notice to minor] Except as permitted in Probate Code section 1460.1 for guardianships, conservatorships, and certain protective proceedings under division 4 of the Probate Code, notice to a minor must be sent directly to the minor. A separate copy of the notice must be sent to the

person or persons having legal custody of the minor, with whom the minor resides.

(e) [Notice required in a decedent's estate when a beneficiary has died]

- (1) *(Notice when a beneficiary dies after the decedent)* Notice must be sent to the personal representative of a beneficiary who died after the decedent and survived for a period required by the decedent's will. If no personal representative has been appointed for the postdeceased beneficiary, notice must be sent to his or her beneficiaries or other persons entitled to succeed to his or her interest in the decedent's estate.
- (2) *(Notice when a beneficiary of the decedent's will dies before the decedent)* When a beneficiary under the will of the decedent died before the decedent or fails to survive the decedent for a period required by the decedent's will, notice must be sent to the persons named in the decedent's will as substitute beneficiaries of the gift to the predeceased beneficiary. If the decedent's will does not make a substitute disposition of that gift, notice must be sent as follows:
 - (A) If the predeceased beneficiary is a "transferee" under Probate Code section 21110(c), to the issue of the predeceased beneficiary determined under Probate Code section 240 and to the residuary beneficiaries of the decedent or to the decedent's heirs if decedent's will does not provide for distribution of the residue of the estate.
 - (B) If the predeceased beneficiary is not a "transferee" under Probate Code section 21110(c), to the residuary beneficiaries of the decedent or to the decedent's heirs if decedent's will does not provide for distribution of the residue of the estate.

Rule 7.51 amended effective January 1, 2004; adopted January 1, 2003.

Rule 7.52. Service of notice when recipient's address unknown

- (a) **[Declaration of diligent search]** Petitioner must file a declaration describing efforts made to locate a person entitled to notice in a proceeding under the Probate Code, but whose address is unknown, before the court will prescribe an alternate form of notice or dispense with notice under (c). The declaration must state the name of the person

whose address is unknown, the last known address of the person, the approximate date when the person was last known to reside there, the efforts made to locate the person, and any facts that explain why the person's address cannot be obtained. The declaration must include a description of the attempts to learn of the person's business and residence addresses by:

- (1) Inquiry of the relatives, friends, acquaintances, and employers of the person entitled to notice and of the person who is the subject of the proceeding;
 - (2) Review of appropriate city telephone directories and directory assistance; and
 - (3) Search of the real and personal property indexes in the recorder's and assessor's offices for the county where the person was last known or believed to reside.
- (b) **[Mailed notice to county seat]** Mailing notice to a person at a county seat is not a manner of giving notice reasonably calculated to give actual notice.
- (c) **[The court may prescribe or dispense with notice]** If a person entitled to notice cannot be located after diligent search, the court may prescribe the manner of giving notice to that person or may dispense with notice to that person.

Rule 7.52 adopted effective January 1, 2003.

Rule 7.53. Notice of hearing of amended or supplemented pleadings

- (a) **[Amended pleading and amendment to a pleading]** An amended pleading or an amendment to a pleading requires the same notice of hearing (including publication) as the pleading it amends.
- (b) **[Supplement to a pleading]** A supplement to a pleading does not require additional notice of hearing, but a copy of a supplement to a pleading must be served if service of a copy of the pleading was required, unless waived by the court.

Rule 7.53 adopted effective January 1, 2003.

Rule 7.54. Publication of Notice of Petition to Administer Estate

Publication and service of a *Notice of Petition to Administer Estate* under Probate Code sections 8110–8125 is sufficient notice of any instrument offered for probate that is filed with, and specifically referred to in, the petition for which notice is given. Any other instrument must be presented in an amended petition, and a new notice must be published and served.

Rule 7.54 adopted effective January 1, 2003.

Rule 7.55. Ex parte application for order

- (a) An ex parte application for an order must allege whether special notice has been requested.
- (b) If special notice has been requested, the application must identify each person who has requested special notice and must allege that special notice has been given to or waived by each person who has requested it.
- (c) Proofs of service of special notice or written waivers of special notice must be filed with the application.

Rule 7.55 adopted effective January 1, 2003.

CHAPTER 3. Pleadings

Title Seven, Probate Rules—Chapter 3, Pleadings amended effective January 1, 2001.

Rule 7.101. Use of Judicial Council forms

Rule 7.102. Titles for pleadings and orders

Rule 7.103. Signature and verification of pleadings

Rule 7.104. Execution and verification of amended pleadings, amendments to pleadings, and supplements to pleadings; use of Judicial Council forms

Rule 7.101. Use of Judicial Council forms

If a petition, an order, or another document to be submitted to the court is one for which the judicial Council has adopted a form, that form must be used. If that form is inadequate in a particular situation, an addendum may be attached to it.

Rule 7.101 amended effective January 1, 2002; adopted effective January 1, 2001.

Drafter's Notes

2001—Rules 7.101, 7.102, 7.901, 7.1001, 7.1002, 7.1050, 7.1051, and 7.201 (New probate rules on pleadings, trusts, guardianships, and conservatorships). These new rules establish statewide rules on probate pleadings, trusts, guardianships, and conservatorships. They require parties to use Judicial Council forms for any document submitted to the court whenever the counsel has adopted a form for that document. If the form is inadequate in a particular situation, an addendum may be attached to it. They also require that new confidential screening forms be submitted to the court with each petition for appointment of a guardian or conservator (new Forms GC-212, GC-312, and GC-314). The forms provide the courts with information that is useful in determining whether to appoint a person as a guardian or conservator. The rules also require probate guardians and conservators to sign acknowledgments that they have received forms describing their duties.

2002—See note following rule 7.2.

Rule 7.102. Titles of pleadings and orders

The title of each pleading and of each proposed order must clearly and completely identify the nature of the relief sought or granted.

Rule 7.102 amended effective January 1, 2003; adopted effective January 1, 2001; previously amended effective January 1, 2002.

Drafter's Notes

2001—See note following rule 7.101.

2002—See note following rule 7.2.

Rule 7.103. Signature and verification of pleadings

- (a) **[Signature of parties]** A pleading must be in writing and must be signed by all persons joining in it.
- (b) **[Verification by parties]** All pleadings filed in proceedings under the Probate Code must be verified. If two or more persons join in a pleading, it may be verified by any of them.
- (c) **[Signature and verification by attorney]** If a person is absent from the county where his or her attorney's office is located, or for some other cause is unable to sign or verify a pleading, the attorney may sign or verify it, unless the person is, or is seeking to become, a fiduciary appointed in the proceeding.

Rule 7.103 adopted effective January 1, 2003.

Rule 7.104. Execution and verification of amended pleadings, amendments to pleadings, and supplements to pleadings; use of Judicial Council forms

(a) [Amended pleading and amendment to a pleading]

- (1) All persons required to sign a pleading must sign an amended pleading. One of the persons required to verify a pleading must verify an amended pleading.
- (2) All persons required to sign a pleading must sign an amendment to that pleading. One of the persons required to verify a pleading must verify an amendment to that pleading.
- (3) A Judicial Council form must be used for an amended pleading, with the word “Amended” added to its caption, if the form was used for the pleading that is amended. A Judicial Council form must not be used for an amendment to a pleading.

(b) [Supplement to a pleading]

- (1) A supplement to a pleading must be signed and verified by one of the persons who were required to sign and verify the pleading that is supplemented. However, the court may, in the exercise of its discretion, accept for filing and consider a supplement to a pleading signed under penalty of perjury by an attorney for the party offering it, where the information contained in the supplement is particularly within the knowledge of the attorney.
- (2) A Judicial Council form must not be used for a supplement to a pleading.

Rule 7.104 adopted effective January 1, 2003.

CHAPTER 4. Appointment of Executors and Administrators

Rule 7.150. Acknowledgment of receipt of statement of Duties and Liabilities of Personal Representative

Rule 7.151. Reimbursement of graduated filing fee by successful subsequent petitioner

Rule 7.150. Acknowledgment of receipt of statement of duties and liabilities of personal representative

Before the court issues letters, each personal representative of a decedent's estate (other than a company authorized to conduct a trust business in California) must execute and file an acknowledgment of receipt of Judicial Council form *Duties and Liabilities of Personal Representative* (form DE-147).

Rule 7.150 amended effective January 1, 2002; adopted effective January 1, 2000.

Drafter's Notes

2002—See note following rule 7.2.

Rule 7.151. Reimbursement of graduated filing fee by successful subsequent petitioner

- (a) **[Duty to reimburse]** In decedents' estates commenced on or after August 18, 2003, a general personal representative appointed on a petition for probate that was not the first-filed petition for appointment of a general personal representative in the proceeding must reimburse the unsuccessful petitioner on the first-filed petition for a portion of the filing fee paid by the unsuccessful petitioner.
- (b) **[Amount of reimbursement]** The reimbursement required under this rule is in the amount of:
 - (1) The filing fee paid by the unsuccessful petitioner in excess of the filing fee that would have been payable on that date for a petition for probate of an estate valued at less than \$250,000, less
 - (2) The unpaid amount of any costs or sanctions awarded against the unsuccessful petitioner in favor of the party that sought the personal representative's appointment in the proceeding.
- (c) **[When reimbursement payable]** The personal representative must make the reimbursement payment required under this rule in cash and in full no later than the date the Inventory and Appraisal is due under Probate Code section 8800(b), including additional time allowed by the court under that provision.

- (d) **[Payment from estate funds]** The reimbursement payment under this rule is an authorized expense of administration and may be made from estate funds without a prior court order.
- (e) **[Receipt from unsuccessful petitioner]** The unsuccessful petitioner must give its signed receipt for the reimbursement payment made under this rule.
- (f) **[Personal representative's right to claim refund]** A personal representative that is required to but fails to make the reimbursement payment under this rule may not claim a refund of the difference between the estimated filing fee and the corrected filing fee under rule 7.552(c).
- (g) **[Petitioner on dismissed petition for probate]** A petitioner that is eligible to receive a refund of filing fee for a dismissed petition for probate under rule 7.552(d) is not an unsuccessful petitioner within the meaning of this rule.

Rule 7.151 adopted effective January 1, 2004.

CHAPTER 5. Bonding of Personal Representatives, Guardians, Conservators, and Trustees

Rule 7.201. Waiver of bond in will

Rule 7.202. Two or more personal representatives

Rule 7.203. Separate bonds for individuals

Rule 7.204. Duty to apply for order increasing bond

Rule 7.205. Independent power to sell real property

Rule 7.206. Bond upon sale of real property

Rule 7.201. Waiver of bond in will

- (a) **[Statement of waiver in petition]** If the will waives bond, the petition for letters must so state.

(Subd (a) amended effective January 1, 2002; previously amended effective January 1, 2001.)

- b) **[Court's discretion to require bond]** The court may require bond if the proposed personal representative resides outside California or for other good cause, even if the will waives bond.

(Subd (b) amended effective January 1, 2001.)

*Rule 7.201 amended effective January 1, 2002; adopted effective January 1, 2000;
previously amended effective January 1, 2001.*

Drafter's Notes

2001—See note following rule 7.101.

2002—See note following rule 7.2.

Rule 7.202. Two or more personal representatives

If a will admitted to probate names two or more persons to serve as executors but not all serve and the will does not expressly waive bond if fewer than all of the named persons serve, the court must require each executor to give a bond unless the court waives this requirement under Probate Code section 8481(a)(2).

Rule 7.202 amended effective January 1, 2002; adopted effective January 1, 2000.

Drafter's Notes

2002—See note following rule 7.2.

Rule 7.203. Separate bonds for individuals

Because a corporate fiduciary (whether personal representative, guardian, conservator, or trustee) cannot assume responsibility for the acts of an individual cofiduciary, an individual cofiduciary who is required to give a bond must provide a separate bond, except to the extent that the court orders the assets to be held solely by the corporate cofiduciary.

Rule 7.203 amended effective January 1, 2002; adopted effective January 1, 2000.

Drafter's Notes

2002—See note following rule 7.2.

Rule 7.204. Duty to apply for order increasing bond

(a) **[Ex parte application for order]** Immediately upon the occurrence of facts making it necessary or appropriate to increase the amount of the bond, the personal representative, or the guardian or conservator of the estate, must make an ex parte application for an order increasing the bond.

(Subd (a) amended effective January 1, 2003; previously amended effective January 1, 2002.)

- (b) [Attorney's duty]** If the personal representative, or the guardian or conservator of the estate, has not already made application under (a), the attorney for the personal representative, or the attorney for the guardian or conservator of the estate, must make the ex parte application immediately upon becoming aware of the need to increase bond.

(Subd (b) amended effective January 1, 2003; previously amended effective January 1, 2002.)

(c) [Amount]

- (1) The application by a personal representative under (a) or by the attorney for a personal representative under (b) must show the value of the estate's personal property and the probable annual gross income of the estate.
- (2) The application by a guardian or conservator of the estate under (a) or by the attorney for a guardian or conservator of the estate under (b) must show the value of the estate's personal property, the probable annual gross income of all of the property of the estate, and the sum of the probable annual gross payments of the public benefits of the ward or conservatee identified in Probate Code section 2320(c)(3).
- (3) If the personal representative has full Independent Administration of Estates Act (IAEA) authority or the guardian or conservator of the estate has authority to sell estate real property without court confirmation, the application must also show the amount of the equity in estate real property.

(Subd (c) amended effective January 1, 2003; previously amended effective January 1, 2002.)

Rule 7.204 amended effective January 1, 2002; adopted effective January 1, 2000.

Drafter's Notes

2002—See note following rule 7.2.

Rule 7.205. Independent power to sell real property

If the personal representative requests or has been granted an independent power to sell or hypothecate real estate or to lease it for a term of more than one year, the personal representative must state in the request to fix the amount of the bond the value of the real property less encumbrances.

Rule 7.205 amended effective January 1, 2002; adopted effective January 1, 2000.

Drafter's Notes

2002—See note following rule 7.2.

Rule 7.206. Bond upon sale of real property

If a bond or additional bond is required in an order confirming sale of real estate, the court must not file the order until the additional bond is filed.

Rule 7.206 amended effective January 1, 2002; adopted effective January 1, 2000.

Drafter's Notes

2002—See note following rule 7.2.

CHAPTER 6. Independent Administration of Estates

Rule 7.250. Report of actions taken under the Independent Administration of Estates Act

(a) **[Report required]** In any accounting, report, petition for preliminary distribution, or petition for final distribution, the petitioner must list and describe all actions taken without prior court approval under the Independent Administration of Estates Act (IAEA) if notice of the proposed action was required. The description of the action must include the following:

- (1) The nature of the action;
- (2) When the action was taken;
- (3) A statement of when and to whom notice was given;
- (4) Whether notice was waived, and if so, by whom; and
- (5) Whether any objections were received.

(Subd (a) amended effective January 1, 2002.)

- (b) **[Actions reported in previous reports]** An action taken under the IAEA that was (i) properly listed and described in a prior accounting, report, or petition for distribution, and (ii) approved by the court, need not be listed and described in a subsequent account, report, or petition for distribution.

Rule 7.250 amended effective January 1, 2002; adopted effective January 1, 2000.

Drafter's Notes

2002—See note following rule 7.2.

CHAPTER 7. Spousal Property Petitions

Rule 7.301. Spousal property petition filed with petition for probate

Rule 7.301. Spousal property petition filed with petition for probate

A petition for spousal property determination or confirmation must be filed separately from a petition for probate of will or for letters of administration, even if both petitions are filed at the same time. The two petitions must be filed under the same case number.

Rule 7.301 amended effective January 1, 2002; adopted effective January 1, 2000.

Drafter's Notes

2002—See note following rule 7.2.

CHAPTER 8. Petitions for Instructions [Reserved]

CHAPTER 9. Creditors' Claims

Rule 7.401. Personal representative's action on the claim

Rule 7.402. Court's action on the claim

Rule 7.403. Listing all claims in the final report

Rule 7.401. Personal representative's action on the claim

For each creditor's claim filed with the court, the personal representative (whether or not acting under the Independent Administration of Estates Act (IAEA)) must:

- (1) Allow or reject in whole or in part the claim in writing;

- (2) Serve a copy of the allowance or rejection on the creditor and the creditor's attorney; and
- (3) File a copy of the allowance or rejection with proof of service with the court.

Rule 7.401 amended effective January 1, 2002; adopted effective January 1, 2000.

Drafter's Notes

2002—See note following rule 7.2.

Rule 7.402. Court's action on the claim

Except as to claims of the personal representative or the attorney, if the personal representative has authority to act under the Independent Administration of Estates Act (IAEA), the court must not act on the personal representative's allowance or rejection of a creditor's claim unless good cause is shown.

Rule 7.402 amended effective January 1, 2002; adopted effective January 1, 2000.

Drafter's Notes

2002—See note following rule 7.2.

Rule 7.403. Listing all claims in the final report

For each claim presented, the personal representative must state in the final report or petition for final distribution:

- (1) The claimant's name;
- (2) The date of filing of the claim;
- (3) The nature of the claim;
- (4) The amount claimed;
- (5) The disposition of the claim; and
- (6) If the claim was rejected, the date of service of the rejection and whether or not a lawsuit was filed.

Rule 7.403 amended effective January 1, 2002; adopted effective January 1, 2000.

Drafter's Notes

2002—See note following rule 7.2.

CHAPTER 10. Sales of Real and Personal Property

Rule 7.451. Refusal to show property to prospective buyers

Rule 7.452. Petitioner or attorney required at hearing

Rule 7.453. Petition for exclusive listing

Rule 7.454. Ex parte application for order authorizing sale of securities or other personal property

Rule 7.451. Refusal to show property to prospective buyers

Upon a showing that the fiduciary has denied any bona fide prospective buyer or his or her broker a reasonable opportunity to inspect the property, the court must not confirm the sale but must continue the sale to allow inspection unless good cause is shown for the court to confirm the sale.

Rule 7.451 amended effective January 1, 2002; adopted effective January 1, 2000.

Drafter's Notes

2002—See note following rule 7.2.

Rule 7.452. Petitioner or attorney required at hearing

The court must not proceed with the hearing on a petition to confirm a sale of property unless the petitioner's attorney or petitioner, if unrepresented, is present.

Rule 7.452 amended effective January 1, 2002; adopted effective January 1, 2000.

Drafter's Notes

2002—See note following rule 7.2.

Rule 7.453. Petition for exclusive listing

A petition for approval of an exclusive listing under Probate Code section 10150(c) must state the following:

- (1) A description of the property to be sold;

- (2) The name of the broker to be employed;
- (3) A summary of the terms of the exclusive listing agreement or include a copy of the listing agreement; and
- (4) A detailed statement of the facts supporting the “necessity and the advantage” to the estate of having the exclusive listing.

Rule 7.453 amended effective January 1, 2002; adopted effective January 1, 2000.

Drafter’s Notes

2002—See note following rule 7.2.

Rule 7.454. Ex parte application for order authorizing sale of securities or other personal property

An ex parte application for authority to sell or to surrender tangible or intangible personal property must state whether or not the property is specifically devised. If it is specifically devised, the written consent of the specific devisee to the sale or surrender must be filed.

Rule 7.454 adopted effective January 1, 2003.

CHAPTER 11. Inventory and Appraisal

Rule 7.501. Inventory and appraisal to show sufficiency of bond

Rule 7.501. Inventory and appraisal to show sufficiency of bond

- (a) **[Statement required]** Every inventory and appraisal must contain one of the following statements:
 - (1) “Bond is waived.”
 - (2) “Bond has been filed in the amount of \$ (*specify amount*) and is insufficient.”
 - (3) “Bond has been filed in the amount of \$ (*specify amount*) and is sufficient.”

(Subd (a) amended effective January 1, 2002.)

- (b) **[Insufficient bond]** If the bond is insufficient, the fiduciary (the personal representative, or the guardian or conservator of the estate), or the attorney for the fiduciary, must immediately make ex parte application as provided in rule 7.204 for an order increasing the amount of the bond.

(Subd (b) amended effective January 1, 2003; previously amended effective January 1, 2002.)

- (c) **[Statement signed by attorney]** The statement required by (a) must be signed by the attorney of record for each fiduciary who has an attorney of record and by each fiduciary who does not.

(Subd (c) amended effective January 1, 2003; previously amended effective January 1, 2002.)

Rule 7.501 amended effective January 1, 2003; adopted effective January 1, 2000; previously amended effective January 1, 2002.

Drafter's Notes

2002—See note following rule 7.2.

CHAPTER 12. Accounts and Reports of Executors and Administrators

Title Seven, Probate Rules—Chapter 12, Accounts and Reports of Executors and Administrators, amended effective January 1, 2003; adopted effective January 1, 2000.

Rule 7.550. Effect of waiver of account

Rule 7.551. Final accounts or reports in estates with nonresident beneficiaries

Rule 7.552. Graduated filing fee adjustments

Rule 7.550. Effect of waiver of account

- (a) **[Waiver of account]** Except as provided in rule 7.550(b), if an accounting is waived under Probate Code section 10954, the details of receipts and disbursements need not be listed in the report required under section 10954(c)(1).

(Subd (a) amended effective January 1, 2004; adopted as part of unlettered subdivision, effective January 1, 2003.)

(b) [Information required in report on waiver of account] The report required when an account has been waived must list the information required by law, including information as to:

- (1) Creditors' claims;
- (2) Sales, purchases, or exchanges of assets;
- (3) Changes in the form of assets;
- (4) Assets on hand;
- (5) Whether the estate is solvent;
- (6) Detailed schedules of receipts and gains or losses on sale (where an amount other than the amount of the Inventory and Appraisal is used as a basis for calculating fees or commissions);
- (7) Costs of administration (if reimbursement of these costs is requested);
- (8) The amount of any fees or commissions paid or to be paid;
- (9) The calculation of such fees or commissions as described in rule 7.705; and
- (10) For decedent's estate proceedings commenced on or after August 18, 2003, the information required by subdivisions (a) and (b) of rule 7.552.

(Subd (b) amended January 1, 2004; adopted as part of unlettered subdivision effective January 1, 2003.)

Rule 7.550 amended effective January 1, 2004; adopted effective January 1, 2003.

Rule 7.551. Final accounts or reports in estates with nonresident beneficiaries

(a) [Final account] Under Revenue and Taxation Code section 19513 and the regulations of the Franchise Tax Board, the court must not approve a

final account in an estate that has a total appraised value greater than \$1,000,000 and from which more than \$250,000 in the aggregate has been distributed or is distributable to beneficiaries who are not residents of California, until the executor or administrator has filed the Franchise Tax Board's state income tax certificate showing that all state personal income taxes, additions to tax, penalties, and interest imposed on the estate or the decedent have been paid or that payment has been secured.

- (b) **[Final report]** If a final account is waived under Probate Code section 10954 in an estate described in (a), the court must not approve the final report required by section 10954(c)(1) until the executor or administrator has filed the Franchise Tax Board's state income tax certificate showing that all state personal income taxes, additions to tax, penalties, and interest imposed on the estate or the decedent have been paid or that payment has been secured.
- (c) **[Expiration date of certificate]** If the certificate described in (a) or (b) is issued on the condition that the final account or report must be approved before a date specified in the certificate, the court must not approve the final account or report after that date unless the executor or administrator first files a new or revised certificate.

Rule 7.551 adopted effective January 1, 2004.

Rule 7.552. Graduated filing fee adjustments

- (a) **[Separate schedule for graduated fee information]** The final account or report filed in every decedent's estate proceeding commenced on or after August 18, 2003, must include a separate schedule showing the following information:
 - (1) The name of each petitioner on the first-filed Petition for Probate in the proceeding;
 - (2) The date the first-filed Petition for Probate was filed in the proceeding;
 - (3) The estimated value of the estate shown in item 3, "[e]stimated value of the estate for filing fee purposes," of the first-filed Petition for Probate in the proceeding;
 - (4) The filing fee paid by or for the petitioner on the first-filed Petition for Probate in the proceeding;

- (5) The following information from the Inventories and Appraisals filed in the proceeding:
 - (A) The date each partial, supplemental, final, or corrected Inventory and Appraisal was filed;
 - (B) The total appraised value of the assets of the estate shown in each filed partial, supplemental, or final Inventory and Appraisal;
 - (C) Changes in the appraised value of the assets of the estate shown in each filed corrected Inventory and Appraisal; and
 - (D) The combined total appraised value of the estate shown in all filed partial, supplemental, final, and corrected Inventories and Appraisals.
- (6) A statement of the amount of filing fee that would have been payable under Government Code section 26827, as amended effective on the date the first-filed Petition for Probate was filed in the proceeding, if the total actual appraised value of the estate had been used as the estimated value for filing fee purposes (the “corrected filing fee”);
- (7) Calculation of the difference between the estimated filing fee paid under Government Code section 26827 upon filing the first Petition for Probate in the proceeding (the “estimated filing fee”) and the “corrected filing fee,” as determined under (6) and subdivision (e) of this rule; and
- (8) The following information concerning filing fee reimbursement payments made by a personal representative in the proceeding under rule 7.151:
 - (A) The amount of each payment;
 - (B) The date each payment was made; and
 - (C) The name, address, and telephone number of the payee and of any attorney of record for the payee in the proceeding.

(b) **[If estimated filing fee less than corrected filing fee]** If the estimated filing fee is less than the corrected filing fee, as determined under (a) and (e), the petition filed with the final account or report must allege that the difference between them has been paid to the clerk of the court. A copy of the clerk's receipt for the payment, and, if applicable, a receipt or other evidence satisfactory to the court of payment of the reimbursement required under rule 7.151, must be attached as an exhibit to the account or report.

(c) **[If estimated filing fee more than corrected filing fee]**

- (1) Subject to the provisions of rule 7.151, if the estimated filing fee is more than the corrected filing fee, as determined under (a) and (e), the personal representative of the decedent's estate is eligible under this subdivision to receive a refund of the difference between them, without interest.
- (2) The personal representative must apply to the court for the refund, in accordance with the court's local rules and practices for such payments.
- (3) Unless authorized to retain a reserve against closing expenses that expressly is to include the court's refund payment after the personal representative's discharge, the personal representative must not apply for a discharge while an application for refund of filing fee under this subdivision is pending and before the court's refund payment is received.

(d) **[Refund on voluntarily dismissed Petition for Probate]**

- (1) A petitioner that files a Petition for Probate on or after August 18, 2003, and voluntarily dismisses the petition at any time within 90 days after it is filed and before an order granting or denying the petition is filed, is eligible under this subdivision to receive a refund, without interest, of all filing fees paid in excess of the filing fees that would have been payable on the original filing date for a petition for probate of an estate valued at less than \$250,000.
- (2) The petitioner on a dismissed Petition for Probate under (1) must apply to the court for the refund, in accordance with the court's local rules and practices for such payments.

- (e) **[Additional adjustment in corrected filing fee in insolvent estates]**
 If the expenses of administration must be proportionately reduced under Probate Code section 11420 because the property in the estate is insufficient to pay them in full, the court may approve a determination of the corrected filing fee under this rule that reflects the proportionate reduction of those expenses, provided that the corrected filing fee may not be reduced below the minimum fee required by Government Code section 26827 on the date the estimated fee was paid.
- (f) **[Sample schedule of graduated fee information]** The schedule of graduated fee information required under (a) may be substantially as follows:

SCHEDULE __
 Graduated Filing Fee Information

1. The first-filed Petition for Probate in this proceeding was filed on [Date] by [name of each petitioner].
2. The estimated value of the estate for filing fee purposes shown on the first-filed Petition for Probate in this proceeding is \$_____.
3. The filing fee paid by or for the petitioner[s] on the first-filed Petition for Probate in this proceeding was \$_____.
4. The following Inventories and Appraisals have been filed in this proceeding:

Type	Date Filed	Appraised Value
[Partial no. __]	[09/30/03]	\$
[Partial no. __]		\$
Final		\$
[Supplemental]		\$
[Correcting]		\$ (or \$)_____
Total appraised value of estate		\$ _____

5. Corrected Filing Fee:

Total appraised value of estate: \$

Filing fee as of the date in 1 above, based on
total appraised value of estate: \$

Adjustment to reflect proportional reduction
of expenses of administration for insolvent
estate under CRC, rule 7.552(e): (\$
_____)

Corrected Filing Fee: \$ _____

6. Difference between estimated and corrected
filing fee:

Estimated filing fee from 3 above: \$

Corrected filing fee from 5 above: (\$ _____)

Difference: \$ (or \$) _____

7. Filing fee reimbursements under CRC, rule 7.151:

Payee(s)	Date Paid	Amount
[Name, address, and telephone number of each payee and attorney of record in the proceeding]	[10/25/03]	\$

Rule 7.552 adopted effective January 1, 2004.

CHAPTER 13. Taxes [Reserved]

CHAPTER 14. Preliminary and Final Distributions

Rule 7.650. Decree of distribution establishing testamentary trusts

Rule 7.651. Description of property in petition for distribution

***Rule 7.652. Allegations in petition for distribution concerning character of
property***

Rule 7.650. Decree of distribution establishing testamentary trusts

- (a) **[Determining the trust]** Upon distribution, the court must:

- (1) Determine whether or not a valid trust has been created by the will;
- (2) Determine the terms of the trust; and
- (3) Order distribution of the trust property to the trustee.

(Subd (a) amended effective January 1, 2002.)

- (b) [Terms of the trust]** The order for distribution must incorporate the terms of the trust so as to give effect to the conditions existing at the time distribution is ordered. The pertinent provisions must be stated in the present tense and in the third person instead of quoting the will verbatim.

(Subd (b) amended effective January 1, 2002.)

Rule 7.650 amended effective January 1, 2002; adopted effective January 1, 2000.

Drafter's Notes

2002—See note following rule 7.2.

Rule 7.651. Description of property in petition for distribution

- (a) [Property description]** A petition for distribution must list and describe in detail the property to be distributed, in the body of the petition or in an attachment that is incorporated in the petition by reference. If an account is filed with the petition, the description must be included in a schedule in the account.
- (b) [Specific description requirements]** The description under (a) must:
- (1) Include the amount of cash on hand;
 - (2) Indicate whether promissory notes are secured or unsecured, and describe in detail the security interest of any secured notes;
 - (3) Include the complete legal description, street address (if any), and assessor's parcel number (if any) of real property; and
 - (4) Include the complete description of each individual security held in "street name" in security brokers' accounts.

Rule 7.651 adopted effective January 1, 2004.

Rule 7.652. Allegations in petition for distribution concerning character of property

- (a) **[Required allegations]** If the character of property to be distributed may affect the distribution, a petition for distribution must allege:
 - (1) The character of the property to be distributed, whether separate, community, or quasi-community; and
 - (2) That the community or quasi-community property to be distributed is either the decedent's one-half interest only, or the entire interest of the decedent and the decedent's spouse.
- (b) **[Compliance with Probate Code section 13502]** If any property is to be distributed outright to the surviving spouse, a written election by the surviving spouse that complies with Probate Code section 13502 must have been filed, and the petition must show the filing date of the election.

Rule 7.652 adopted effective January 1, 2004.

CHAPTER 15. Compensation of Personal Representatives and Attorneys

Title Seven, Probate Rules—Chapter 15, Compensation of Personal Representatives and Attorneys, amended effective January 1, 2003; adopted effective January 1, 2000.

Rule 7.700. Compensation paid in advance

Rule 7.701. Allowance on account of statutory compensation

Rule 7.702. Petition for extraordinary compensation

Rule 7.703. Extraordinary compensation

Rule 7.704. Apportionment of statutory compensation

Rule 7.705. Calculation of statutory compensation

Rule 7.706. Compensation when personal representative is an attorney

Rule 7.707. Application of compensation provisions

Rule 7.700. Compensation paid in advance

- (a) **[No compensation in advance of court order]** The personal representative must neither pay nor receive, and the attorney for the personal representative must not receive, statutory commissions or fees

or fees for extraordinary services in advance of an order of the court authorizing their payment.

- (b) **[Surcharge for payment or receipt of advance compensation]** In addition to removing the personal representative and imposing any other sanctions authorized by law against the personal representative or the attorney for the personal representative, the court may surcharge the personal representative for payment or receipt of statutory commissions or fees or fees for extraordinary services in advance of an order of the court authorizing their payment. The surcharge may include interest at the legal rate from the date of payment.

Rule 7.700 adopted effective January 1, 2003.

Rule 7.701. Allowance on account of statutory compensation

The court may authorize an allowance of statutory fees or commissions on account before approval of the final account and the decree of final distribution. Any allowance made before settlement of the final account must be low enough to avoid the possibility of overpayment. The allowance:

- (1) Must be based on the estimated amount of statutory compensation payable on the estate determined as of the date of the petition for allowance;
- (2) Must be in proportion to the work actually performed; and
- (3) Must be based upon a detailed description of the ordinary services performed and remaining to be performed.

Rule 7.701 adopted effective January 1, 2003.

Rule 7.702. Petition for extraordinary compensation

A petition for extraordinary compensation must include, or be accompanied by, a statement of the facts upon which the petition is based. The statement of facts must:

- (1) Show the nature and difficulty of the tasks performed;
- (2) Show the results achieved;
- (3) Show the benefit of the services to the estate;

- (4) Specify the amount requested for each category of service performed;
- (5) State the hourly rate of each person who performed services and the hours spent by each of them;
- (6) Describe the services rendered in sufficient detail to demonstrate the productivity of the time spent; and
- (7) State the estimated amount of statutory compensation to be paid by the estate, if the petition is not part of a final account or report.

Rule 7.702 adopted effective January 1, 2003.

Rule 7.703. Extraordinary compensation

- (a) **[Discretion of the court]** An award of extraordinary compensation to the personal representative or to the attorney for the personal representative is within the discretion of the court. The court may consider the amount of statutory compensation when determining compensation for extraordinary services.
- (b) **[Examples of extraordinary services by personal representative]**
The following is a nonexclusive list of activities for which extraordinary compensation may be awarded to the personal representative:
 - (1) Selling, leasing, exchanging, financing, or foreclosing real or personal property;
 - (2) Carrying on decedent's business if necessary to preserve the estate or under court order;
 - (3) Preparing tax returns; and
 - (4) Handling audits or litigation connected with tax liabilities of the decedent or of the estate.
- (c) **[Examples of extraordinary services by attorney]** The following is a nonexclusive list of activities for which extraordinary compensation may be awarded to the attorney for the personal representative:

- (1) Legal services in connection with the sale of property held in the estate;
- (2) Services to secure a loan to pay estate debts;
- (3) Litigation undertaken to benefit the estate or to protect its interests;
- (4) Defense of the personal representative's account;
- (5) Defense of a will contested after its admission to probate;
- (6) Successful defense of a will contested before its admission to probate;
- (7) Successful defense of a personal representative in a removal proceeding;
- (8) Extraordinary efforts to locate estate assets;
- (9) Litigation in support of attorney's request for extraordinary compensation, where prior compensation awards are not adequate compensation under all the circumstances;
- (10) Coordination of ancillary administration; and
- (11) Accounting for a deceased, incapacitated, or absconded personal representative under Probate Code section 10953.

(d) [Contingency fee agreement for extraordinary legal services] An attorney may agree to perform extraordinary services for a personal representative on a contingent-fee basis on the following conditions:

- (1) The agreement must be in writing and must comply with section 6147 of the Business and Professions Code.
- (2) The court must approve the agreement in the manner provided in Probate Code section 10811(c), based upon findings that the compensation under the agreement is just and reasonable, that the agreement is to the advantage of the estate, and that the agreement is in the best interest of the persons interested in the estate.

- (3) In the absence of an emergency or other unusual circumstances, the personal representative must obtain the court's approval of the contingency fee agreement before services are performed under it.
- (e) **[Use of paralegals in the performance of extraordinary services]**
Extraordinary legal services may include the services of a paralegal acting under the direction and supervision of an attorney. A request for extraordinary legal fees for a paralegal's services must:
 - (1) Describe the qualifications of the paralegal (including education, certification, continuing education, and experience);
 - (2) State the hours spent by the paralegal and the hourly rate requested for the paralegal's services;
 - (3) Describe the services performed by the paralegal;
 - (4) State why it was appropriate to use the paralegal's services in the particular case; and
 - (5) Demonstrate that the total amount requested for the extraordinary services of the attorney and the paralegal does not exceed the amount appropriate if the attorney had performed the services without the paralegal's assistance.

Rule 7.703 adopted effective January 1, 2003.

Rule 7.704. Apportionment of statutory compensation

- (a) **[One statutory commission and fee]** There is one statutory commission for ordinary services by the personal representative of the estate and one statutory attorney fee for ordinary legal services to the personal representative, regardless of the number of personal representatives or attorneys performing the services. The court may apportion statutory commissions and fees among multiple, successive, and concurrent personal representatives or attorneys. The apportionment must be based on the agreement of the multiple personal representatives or attorneys or, if there is no agreement, according to the services actually rendered by each of them.
- (b) **[Notice of hearing]** If there has been a change of personal representative or a substitution of attorneys for the personal representative, notice of hearing of any interim or final petition seeking

or waiving an award of statutory compensation must be given to all prior personal representatives or attorneys unless:

- (1) A waiver of notice executed by all prior personal representatives or attorneys is on file or is filed with the petition;
- (2) A written, signed agreement on the allocation of statutory commissions or fees between the present personal representative or attorney and all prior personal representatives or attorneys is on file or is included in or filed with the petition; or
- (3) The court's file and the petition demonstrate that the commissions or fees of the prior personal representatives or attorneys have been previously provided for and allowed by the court.

Rule 7.704 adopted effective January 1, 2003.

Rule 7.705. Calculation of statutory compensation

- (a) **[Account filed]** A petition for statutory commissions or attorney fees must state the amount of statutory compensation payable and set forth the estate accounted for and the calculation of statutory compensation. The calculation must be stated in the petition in substantially the following form:

COMMISSION OR FEE BASE

Inventory and Appraisal	\$ _____
Receipts, Excluding Principal	\$ _____
Gains on Sales	\$ _____
Losses on Sales	\$ (_____)

TOTAL COMMISSION OR FEE BASE \$ _____

COMMISSION OR FEE COMPUTATION

4% on first \$100,000	(\$ _____) ¹	
\$ _____ ²		
3% on next \$100,000	(\$ _____)	\$ _____
2% on next \$800,000	(\$ _____)	\$ _____
1% on next \$9,000,000	(\$ _____)	\$ _____
½ of 1% on next \$15,000,000	(\$ _____)	\$ _____
Amount requested from the court		

for estates above \$25,000,000 (\$_____) \$_____

TOTAL COMMISSION OR FEE

\$_____ ³

¹ Enter in this column the amount of the estate accounted for in each category. The sum of the entries in this column would equal the total commission or fee base.

² Enter in this column the product of the amount of the estate accounted for in each category multiplied by the percentage for that category.

³ Enter here the sum of the products entered in this column.

- (b) **[Account waived]** When an account has been waived, the report must contain the information required by rule 7.550. If the report is accompanied by a request for statutory commissions or fees, the basis for their computation must be included in the petition substantially in the form provided in (a). Notwithstanding the waiver of account, if the petition and report requests statutory commissions or fees based on any amount other than the amount of the Inventory and Appraisal, detailed schedules of receipts and gains and losses on sales must be included.

Rule 7.705 adopted effective January 1, 2003.

Rule 7.706. Compensation when personal representative is an attorney

- (a) **[Personal representative's compensation only]** Notwithstanding the provisions of the decedent's will, a personal representative who is an attorney may receive the personal representative's compensation but may not receive compensation for legal services as the attorney for the personal representative unless the court approves the right to compensation for legal services in advance and finds the arrangement is to the advantage, benefit, and best interest of the decedent's estate.
- (b) **[Agreement not to participate in compensation]** A law firm of which the personal representative is a partner or shareholder may request compensation for legal services in addition to the personal representative's compensation if a written agreement not to participate in each other's compensation, signed by the personal representative and by authorized representatives of the law firm, has been filed in the estate proceeding.

Rule 7.706 adopted effective January 1, 2003.

Rule 7.707. Application of compensation provisions

For proceedings commenced after June 30, 1991, the law in effect on the date of the court's order awarding statutory compensation determines the amount of such compensation.

Rule 7.707 adopted effective January 1, 2003.

CHAPTER 16. Compensation in All Matters Other Than Decedents' Estates

Title Seve, Probate Rules—Chapter 16, Compensation in All matters Other Than Decedents' E

Rule 7.750. Application of rules to guardianships and conservatorships

Rule 7.751. Petitions for orders allowing compensation for guardians or conservators and their attorneys

Rule 7.752. Court may order accounting before allowing compensation

Rule 7.753. Contingency fee agreements in guardianships and conservatorships

Rule 7.754. Use of paralegals in the performance of legal services for the guardian or conservator

Rule 7.755. Advance payments and periodic payments to guardians, conservators, and to their attorneys on account for future services

Rule 7.756. Compensation of trustees

Rule 7.750. Application of rules to guardianships and conservatorships

The rules in this chapter apply to guardianships and conservatorships under division 4 of the Probate Code (Prob. Code, § 1400 et seq.) and to conservatorships under the Lanterman-Petris-Short Act (Welf. & Inst. Code, §§ 5350–5371). They do not apply to guardianships under chapter 2 of division 2 of the Welfare and Institutions Code (Welf. & Inst. Code, § 200 et seq.). Under Probate Code section 2646, the rules in this chapter applicable to guardianships and conservatorships apply only to compensation payable from the estate of the ward or conservatee or from money or property recovered or collected for the estate of the ward or conservatee.

Rule 7.750 adopted effective January 1, 2003.

Rule 7.751. Petitions for orders allowing compensation for guardians or conservators and their attorneys

- (a) **[Petition for allowance of compensation for services performed prior to appointment of guardian or conservator]** A petition for allowance of compensation to a guardian or conservator or to the attorney for a guardian or conservator may include a request for compensation for services rendered before an order appointing a guardian or conservator. The petition must show facts demonstrating the necessity for preappointment services.
- (b) **[Required showing in petition for allowance of compensation]** All petitions for orders fixing and allowing compensation must comply with the requirements of rule 7.702 concerning petitions for extraordinary compensation in decedents' estates, to the extent applicable to guardianships and conservatorships, except that the best interest of the ward or conservatee is to be considered instead of the interest of beneficiaries of the estate.

Rule 7.751 adopted effective January 1, 2003.

Rule 7.752. Court may order accounting before allowing compensation

Notwithstanding the time period after which a petition may be filed for an allowance of compensation to a guardian, conservator, or an attorney for a guardian or conservator, the court may order the guardian or conservator to file an accounting before or at the time a petition for an allowance of compensation is filed or heard.

Rule 7.752 adopted effective January 1, 2003.

Rule 7.753. Contingency fee agreements in guardianships and conservatorships

A guardian or conservator of the estate may contract with an attorney for a contingency fee for the attorney's services on behalf of the ward or conservatee, or the estate, in connection with a matter that is of a type customarily the subject of a contingency fee agreement, if the court has authorized the guardian or conservator to do so, or if the agreement has been approved by the court under Probate Code section 2644. The agreement must also satisfy the requirements of rule 7.703(d)(1).

Rule 7.753 adopted effective January 1, 2003.

Rule 7.754. Use of paralegals in the performance of legal services for the guardian or conservator

An attorney for a guardian or conservator may use the services of a paralegal acting under the direction and supervision of the attorney. A request for an allowance of compensation for the services of a paralegal must satisfy the requirements of rule 7.703(e).

Rule 7.754 adopted effective January 1, 2003.

Rule 7.755. Advance payments and periodic payments to guardians, conservators, and to their attorneys on account for future services

- (a) **[No advance payments]** A guardian or conservator must neither pay nor receive, and the attorney for a guardian or conservator must not receive, any payment from the estate of the ward or conservatee for services rendered in advance of an order of the court authorizing the payment. If an advance payment is made or received, the court may surcharge the guardian or conservator in the manner provided in rule 7.700(b), in addition to removing the guardian or conservator or imposing any other sanction authorized by law on the guardian or conservator or on the attorney.
- (b) **[Periodic payments to attorneys on account]** A guardian or conservator may request the court to authorize periodic payment of attorney fees on account of future services under Probate Code section 2643 on a showing of an ongoing need for legal services.

Rule 7.755 adopted effective January 1, 2003.

Rule 7.756. Compensation of trustees

In determining or approving compensation of a trustee, the court may consider, among other factors, the following:

- (1) The gross income of the trust estate;
- (2) The success or failure of the trustee's administration;
- (3) Any unusual skill, expertise, or experience brought to the trustee's work;
- (4) The fidelity or disloyalty shown by the trustee;
- (5) The amount of risk and responsibility assumed by the trustee;

- (6) The time spent in the performance of the trustee's duties;
- (7) The custom in the community where the court is located as to compensation authorized by settlors, as to compensation allowed by the court, or as to charges of corporate trustees for trusts of similar size and complexity; and
- (8) Whether the work performed was routine, or required more than ordinary skill or judgment.

Rule 7.756 adopted effective January 1, 2003.

CHAPTER 17. Contested Hearings and Trials

Rule 7.801. Objections and responses

Rule 7.801. Objections and responses

If the court continues a matter to allow a written objection or response to be made, and the responding or objecting party fails to serve and file a timely objection or response, the court may deem the objections or responses waived.

Rule 7.801 adopted effective January 1, 2000.

CHAPTER 18. Discovery [Reserved]

CHAPTER 19. Trusts

Title Seven, Probate Rules—Chapter 19, Trusts amended effective January 1, 2001.

Rule 7.901. Trustee's accounts

Rule 7.902. Beneficiaries to be listed in petitions and accounts

Rule 7.901. Trustee's accounts

- (a) **[Period covered]** A trustee's account must state the period covered by the account.

(Subd (a) amended effective January 1, 2002.)

- (b) **[First account]** The first account in a testamentary trust must reconcile the initial assets on hand with the decree of distribution of the estate.

(Subd (b) amended effective January 1, 2002.)

- (c) **[Principal and income]** All trustee's accounts in a trust that distributes income to a beneficiary must allocate receipts and disbursements between (1) principal receipts and disbursements, and (2) income receipts and disbursements.

(Subd (c) amended effective January 1, 2002.)

Rule 7.901 amended effective January 1, 2002; adopted effective January 1, 2001.

Drafter's Notes

2001—See note following rule 7.101.

2002—See note following rule 7.2.

Rule 7.902. Beneficiaries to be listed in petitions and accounts

All petitions and accounts involving a trust must state the names and last known addresses of all vested or contingent beneficiaries, including all persons in being who may or will receive income or corpus of the trust, provided, however, that (i) during the time that the trust is revocable and the person holding the power to revoke the trust is competent, the names and last known addresses of beneficiaries who do not hold the power to revoke do not need to be stated, and (ii) the petition or account does not need to state the name and last known address of any beneficiary who under Probate Code section 15804 need not be given notice.

Rule 7.902 adopted effective January 1, 2002.

Drafter's Notes

2002—See note following rule 7.2.

CHAPTER 20. Minors' Claims

Title Seven, Probate Rules—Chapter 20, Minors' Claims, amended effective January 1, 2002.

Rule 7.950. Petition for the approval of the compromise of a claim

Rule 7.951. Disclosure of the attorney's interest in a petition to compromise a claim

Rule 7.952. Attendance at hearing on the petition to compromise a claim

Rule 7.953. Order for the deposit of funds of a minor or an incompetent person

Rule 7.954. Petition for the withdrawal of funds deposited for a minor or an incompetent person

Rule 7.955. Attorney fees for services to minors and incompetent persons

Rule 7.950. Petition for the approval of the compromise of a claim

A petition for court approval of a compromise or covenant not to sue under the Probate Code or under Code of Civil Procedure section 372 must be verified by the petitioner and must contain a full disclosure of all information that has any bearing upon the reasonableness of the compromise or covenant. The information must include, but is not limited to, the following:

- (1) The name, birthdate, age, and sex of the minor or incompetent person;
- (2) An account of the facts or events and the circumstances out of which the claim or injury arose, including the time, the place, and the identity of the persons involved;
- (3) A description of the nature and extent of the injury giving rise to the claim, with sufficient particularity to inform the court whether the injury is permanent or temporary;
- (4) An original or a photocopy of all doctors' reports containing a diagnosis of and prognosis for the injury, and a report of the claimant's present condition;
- (5) In all cases in which payment for medical or hospital care or treatment for the claimant is sought, the names of the hospitals, doctors, and other providers furnishing the care, the amounts of the respective charges for the care (whether paid or owing), the amounts paid (whether covered by insurance or not), the amounts of any negotiated reductions of the charges, and the net amount owed to each provider;
- (6) The amount of attorney's fees requested and the basis for the fees, with an itemization of the costs sought to be allowed and charged against the settlement;

- (7) The gross and net amounts of the settlement;
- (8) A description of the manner in which the settlement proceeds will be distributed;
- (9) A full disclosure of all amounts, if any, paid or to be paid to other claimants;
- (10) A statement of whether the petitioner is a plaintiff in the same action with the minor or incompetent claimant and, if so, whether the pendency or disposition of the petitioner's claim on his or her own behalf has in any way affected the proposed compromise of the claim;
- (11) A statement of whether the petitioner is a claimant against the recovery of the minor or incompetent claimant and, if so, whether the pendency or disposition of petitioner's claim on his or her own behalf has in any way affected the proposed compromise of the claim;
- (12) If settlement money is to be deposited in an account or accounts subject to withdrawal only upon order of the court, the name and address of the proposed depository;
- (13) A statement whether notice of the action or claim has been given under Welfare and Institutions Code section 14124.73; and
- (14) If the petition requests an order for payment of money to a special needs trust, a statement of the method by which all statutory liens will be satisfied under Probate Code section 3604.

Rule 7.950 adopted effective January 1, 2002.

Drafter's Notes:

2002—See note following rule 378.

Rule 7.951. Disclosure of the attorney's interest in a petition to compromise a claim

If the petitioner has been represented or assisted by an attorney in preparing the petition to compromise the claim or in any other respect with regard to the claim, the petition must disclose the following information:

- (1) The name, state bar number, law firm, if any, and business address of the attorney;
- (2) Whether the attorney became involved with the petition, directly or indirectly, at the instance of any party against whom the claim is asserted or of any party's insurance carrier;
- (3) Whether the attorney represents or is employed by any other party or any insurance carrier involved in the matter;
- (4) Whether the attorney has received any attorney's fees or other compensation for services provided in connection with the claim giving rise to the petition or with the preparation of the petition, and, if so, the amounts and the identity of the person who paid the fees or other compensation;
- (5) If the attorney has not received any attorney's fees or other compensation for services provided in connection with the claim giving rise to the petition or with the preparation of the petition, whether the attorney expects to receive any fees or other compensation for these services, and, if so, the amounts and the identity of the person who is expected to pay the fees or other compensation; and
- (6) The terms of any agreement between the petitioner and the attorney.

Rule 7.951 adopted effective January 1, 2002.

Drafter's Notes:

2002—See note following rule 378.

Rule 7.952. Attendance at hearing on the petition to compromise a claim

- (a) **[Attendance of the petitioner and claimant]** The person compromising the claim on behalf of the minor or incompetent person and the minor or incompetent person must attend the hearing on the

compromise of the claim unless the court for good cause dispenses with their personal appearance.

- (b) **[Attendance of the physician and other witnesses]** At the hearing, the court may require the presence and testimony of witnesses, including the attending or examining physician.

Rule 7.952 adopted effective January 1, 2002.

Drafter's Notes:

2002—See note following rule 378.

Rule 7.953. Order for the deposit of funds of a minor or an incompetent person

- (a) **[Acknowledgment of receipt by financial institution]** In any case in which the court orders that funds to be received by a minor or an incompetent person must be deposited in a financial institution and not disbursed without further order of the court, the order must include a provision that a certified or filed endorsed copy of the order must be delivered to a manager at the financial institution where the funds are to be deposited, and that a receipt from the financial institution must be promptly filed with the court, acknowledging receipt of both the funds deposited and the order for deposit of funds.
- (b) **[Order permitting the withdrawal of funds by a former minor]** If, in the order approving the compromise of a minor's claim, there is a finding that the minor will attain the age of majority on a definite date, the order for deposit may require that the depository permit the withdrawal of funds by the former minor after that date, without further order of the court.

Rule 7.953 adopted effective January 1, 2002.

Drafter's Notes:

2002—See note following rule 378.

Rule 7.954. Petition for the withdrawal of funds deposited for a minor or an incompetent person

- (a) **[Verified petition required]** A petition for the withdrawal of funds deposited for a minor or an incompetent person must be verified and

must include the identity of the depository, a showing of the amounts previously withdrawn, a statement of the balance on deposit at the time of the filing of the petition, and a justification for the withdrawal.

- (b) **[Ex parte or noticed hearing]** A petition for the withdrawal of funds may be considered ex parte or set for a hearing at the discretion of the court.

Rule 7.954 adopted effective January 1, 2002.

Drafter's Notes:

2002—See note following rule 378.

Rule 7.955. Attorney fees for services to minors and incompetent persons

In all cases under Code of Civil Procedure section 372 or Probate Code sections 3600–3601, the court must use a reasonable fee standard when approving and allowing the amount of attorney fees payable from money or property paid or to be paid for the benefit of a minor or incompetent person. The court may approve and allow attorney fees under a contingency fee agreement made in accordance with law, provided that the amount of fees is reasonable under all the facts and circumstances.

Rule 7.955 adopted effective January 1, 2003.

Advisory Committee Comment (2003)

This rule requires the court to approve and allow attorney fees in an amount that is reasonable under all the facts and circumstances, under Probate Code section 3601. The rule is declaratory of existing law concerning attorney fees under a contingency fee agreement when the fees must be approved by the court. The facts and circumstances that the court may consider are discussed in a large body of decisional law under section 3601 and under other statutes that require the court to determine reasonable attorney fees. The rule permits, but does not require, the court to allow attorney fees in an amount specified in a contingency fee agreement. The amount of attorney fees allowed by the court must meet the reasonableness standard of section 3601 no matter how they are determined. That standard may support the court's allowance of attorney fees that are higher or lower than fees determined by applying the formulas in some current local rules.

CHAPTER 21. Guardianships

Title Seven, Probate Rules—Chapter 21, Guardianships amended effective January 1, 2001.

Rule 7.1001. Guardian screening form

Rule 7.1002. Acknowledgment of receipt of Duties of Guardian

Rule 7.1003 Confidential guardianship status report form

Rule 7.1004. Termination of guardianship

Rule 7.1005. Service of copy of final account or report after resignation or removal of guardian

Rule 7.1006. Service of copy of final account on termination of guardianship

Rule 7.1007. Settlement of accounts and release by former minor

Rule 7.1001. Guardian screening form

- (a) **[Screening form to be submitted with petition]** Each proposed probate guardian, except a public guardian, or a bank or other entity entitled to conduct the business of a trust company, must submit to the court with the petition for appointment of guardian a completed *Confidential Guardian Screening Form* (form GC-212).

(Subd (a) amended effective January 1, 2002.)

- (b) **[Use of form]** The information on the *Confidential Guardian Screening Form* is used by the court and by persons or agencies designated by the court to assist the court in determining whether a proposed guardian should be appointed.

(Subd (b) amended effective January 1, 2002.)

- (c) **[Form to be confidential]** The *Confidential Guardian Screening Form* and the information contained on the form are confidential. The clerk's office must maintain these forms in a manner that will protect and preserve their confidentiality.

(Subd (c) amended effective January 1, 2002.)

Rule 7.1001 amended effective January 1, 2002; adopted effective January 1, 2001.

Drafter's Notes

2001—See note following rule 7.101.

2002—See note following rule 7.2.

Rule 7.1002. Acknowledgment of receipt of Duties of Guardian

Before the court issues letters, each guardian must execute and file an acknowledgment of receipt of the *Duties of Guardian and Acknowledgment of Receipt* (form GC-248).

Rule 7.1002 amended effective January 1, 2002; adopted effective January 1, 2001.

Drafter's Notes

2001—See note following rule 7.101.

2002—See note following rule 7.2.

Rule 7.1003 Confidential guardianship status report form

- (a) **[Due date of status report]** Each guardian required by the court to complete, sign, and file the status report authorized by Probate Code section 1513.2 must file the completed and signed report no later than one month after the anniversary of the date of the order appointing him or her as guardian. Co-guardians may sign and file their reports jointly.
- (b) **[Court clerk's duties]** The clerk of each court that requires guardians to file the status report authorized by Probate Code section 1513.2 must:
 - (1) Determine the annual due date for the completed report from each appointed guardian required to file the report;
 - (2) Fill in the due date for the completed report, in the space provided in the form for that purpose, on each blank copy of the form that must be mailed to appointed guardians under (3); and
 - (3) Mail by first class mail to each appointed guardian no later than one month prior to the date the status report is due under (a) a blank copy of Judicial Council form GC-251, *Confidential Guardianship Status Report*, for each child under guardianship under the same case number.

Rule 7.1003 adopted effective January 1, 2004.

Rule 7.1004. Termination of guardianship

- (a) **[Operation of law or court order]** A guardianship of the person or estate of a minor may terminate by operation of law or may be terminated by court order where the court determines that it would be in the ward's best interest to terminate the guardianship.
- (b) **[Guardian of the person]** Under Probate Code section 1600 a guardianship of the person terminates by operation of law, and the

guardian of the person need not file a petition for its termination, when the ward attains majority, dies, is adopted, or is emancipated.

- (c) **[Duty of guardian of estate on termination]** A guardian of the estate whose administration is terminated by operation of law or court order must file and obtain the court's approval of a final account or report of the administration.

Rule 7.1004 adopted effective January 1, 2004.

Rule 7.1005. Service of copy of final account or report after resignation or removal of guardian

A resigned or removed guardian of the estate must serve a copy of the guardian's final account or report and the petition for its settlement, with the notice of hearing that must be served on the successor guardian of the estate under Probate Code section 1460(b)(1), unless the court dispenses with such service.

Rule 7.1005 adopted effective January 1, 2004.

Rule 7.1006. Service of copy of final account on termination of guardianship

- (a) **[Minor living]** In addition to service of notices of hearing required under Probate Code section 1460(b), on termination of the guardianship the guardian of the estate must serve a copy of the guardian's final account and petition for its settlement on the minor, unless the court dispenses with such service.
- (b) **[Personal representative of deceased minor]** If the minor is deceased, in addition to service of notices of hearing required under Probate Code section 1460(b), on termination of the guardianship the guardian of the estate must serve a notice of hearing and a copy of the guardian's final account and petition for its settlement on the personal representative of the deceased minor's estate, unless the court dispenses with such service.
- (c) **[Successors in interest to deceased minor]** If the minor is deceased and no personal representative of the minor's estate has been appointed or qualified or if the personal representative of the minor's estate is also the guardian, on termination of the guardianship, in addition to the notices of hearing required under Probate Code section 1460(b), the guardian of the estate must serve a notice of hearing and a copy of the

guardian's final account and petition for its settlement on the persons entitled to succeed to the deceased minor's estate, unless the court dispenses with such service.

Rule 7.1006 adopted effective January 1, 2004.

Rule 7.1007. Settlement of accounts and release by former minor

- (a) **[Release of guardian of estate by ward after majority]** A ward who has attained majority may settle accounts with his or her guardian of the estate and may give a valid release to the guardian if the court determines, at the time of the hearing on the final account, or on the final report and petition for termination on waiver of account, that the release has been obtained fairly and without undue influence. The release is not effective to discharge the guardian until one year after the ward has attained majority.
- (b) **[Appearance of ward]** The court may require the personal appearance of the ward at the hearing on the final account or report of the guardian of the estate after termination of the guardianship.

Rule 7.1007 adopted effective January 1, 2004.

CHAPTER 22. Conservatorships

Title Seven, Probate Rules—Chapter 22, Conservatorships amended effective January 1, 2001.

Rule 7.1050. Conservator forms

Rule 7.1051. Acknowledgment of receipt of duties of conservator

Rule 7.1052. Termination of conservatorship

Rule 7.1053. Service of final account of removed or resigned conservator

Rule 7.1054. Service of final account after termination of conservatorship.

Rule 7.1050. Conservator forms

- (a) **[Forms to be submitted with petition]** Each petitioner, unless the petitioner is a bank or other entity entitled to conduct the business of a trust company, must submit to the court with the petition for appointment of conservator a completed *Confidential Supplemental Information* form (form GC-312). In addition, each proposed conservator, except a bank or other entity entitled to conduct the

business of a trust company, or a public guardian, must submit a completed *Confidential Conservator Screening Form* (form GC-314).

(Subd (a) amended effective January 1, 2002.)

- (b) **[Use of form]** The information on the *Confidential Conservator Screening Form* is used by the court and by persons or agencies designated by the court to assist the court in determining whether a proposed conservator should be appointed.

(Subd (b) amended effective January 1, 2002.)

- (c) **[Forms to be confidential]** The *Confidential Conservator Screening Form*, the *Confidential Supplemental Information* form, and the information contained on these forms are confidential. The clerk's office must maintain these forms in a manner that will protect and preserve their confidentiality.

(Subd (c) amended effective January 1, 2002.)

Rule 7.1050 amended effective January 1, 2002; adopted effective January 1, 2001.

Drafter's Notes

2001—See note following rule 7.101.

2002—See note following rule 7.2.

Rule 7.1051. Acknowledgment of receipt of *Duties of Conservator*

Before the court issues letters, each conservator must execute and file an acknowledgment of receipt of the *Duties of Conservator and Acknowledgment of Receipt of Handbook* (form GC-348).

Rule 7.1051 amended effective January 1, 2002; adopted effective January 1, 2001.

Drafter's Notes

2001—See note following rule 7.101.

2002—See note following rule 7.2.

Rule 7.1052. Termination of conservatorship

- (a) **[Operation of law or court order]** A conservatorship of the person or estate may terminate by operation of law or may be terminated by court order if the court determines that it is no longer required.
- (b) **[Conservator of the person]** Under Probate Code section 1860(a), a conservatorship of the person terminates by operation of law when the conservatee dies, and the conservator of the person need not file a petition for its termination.
- (c) **[Duty of conservator of estate on termination]** A conservator of the estate whose administration is terminated by operation of law or by court order must file and obtain the court's approval of a final account of the administration.

Rule 7.1052 adopted effective January 1, 2004.

Rule 7.1053. Service of final account of removed or resigned conservator

A resigned or removed conservator of the estate must serve a copy of the conservator's final account and the petition for its settlement with the notice of hearing that must be served on the successor conservator of the estate under Probate Code section 1460(b)(1), unless the court dispenses with such service.

Rule 7.1053 adopted effective January 1, 2004.

Rule 7.1054. Service of final account after termination of conservatorship.

After termination of the conservatorship, the conservator of the estate must serve copies of the conservator's final account and the petition for its settlement with the notices of hearing that must be served on the former conservatee and on the spouse or domestic partner of the former conservatee under Probate Code sections 1460(b)(2) and (3), unless the court dispenses with such service.

Rule 7.1054 adopted effective January 1, 2004.

CHAPTER 23. Alternative Dispute Resolution [Reserved]

CHAPTER 24. Miscellaneous [Reserved]